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Form 3-65 160c

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SUSPENSE

Date

Remarks

*205C*  
Executive Secretary*1/24/84*

Date

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## U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE  
ON INTELLIGENCE

WASHINGTON, D.C. 20515

Executive Registry

81- 384

OLL #

84-0341

January 24, 1984

Honorable William J. Casey  
Director of Central Intelligence  
Washington, D.C. 20505

Dear Mr. Casey:

On Wednesday, February 8, 1984, the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, chaired by Representative Romano L. Mazzoli, will hold public hearings on proposals to exempt certain CIA operational files from search, review and disclosure under the Freedom of Information Act.

The hearings will focus on H.R. 3460, introduced by Mr. Mazzoli and H.R. 4431, introduced by Mr. Whitehurst (copies of which are attached). The latter is substantially similar to S. 1324, the Senate-passed bill.

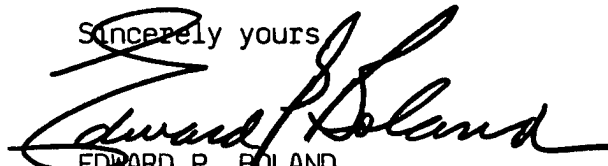
I invite you or an appropriate designee to give testimony on this issue before the Subcommittee at 9:00 a.m. on February 8.

It is requested that your written statement be submitted to the Subcommittee no later than noon on Monday, February 6.

If you have any questions, please contact Subcommittee Counsel, Bernard Raimo, at 225-7311, or the Committee's Chief Counsel, Michael J. O'Neil at 225-4121.

With every good wish, I am

Sincerely yours

  
EDWARD P. BOLAND  
Chairman

98TH CONGRESS  
1ST SESSION

# H. R. 3460

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1983

Mr. MAZZOLI introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence and the Committee on Government Operations

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## A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Intelligence Information  
4       Act of 1983".

5       SEC. 2. (a) The National Security Act of 1947 is  
6       amended by adding at the end thereof the following new title:

1 "TITLE VII—RELEASE OF REQUESTED INFORMA-  
2 TION TO THE PUBLIC BY THE CENTRAL IN-  
3 TELLIGENCE AGENCY

4 EXEMPTION OF CERTAIN OPERATIONAL FILES FROM  
5 SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

6 "SEC. 701. (a) Operational files located in the Director-  
7 ate of Operations, Directorate for Science and Technology,  
8 and Office of Security of the Central Intelligence Agency  
9 shall be exempted from the provisions of the Freedom of In-  
10 formation Act which require publication or disclosure, or  
11 search or review in connection therewith.

12 "(b) Subsection (a) of this section shall not prevent the  
13 search and review of operational files for information con-  
14 cerning—

15 "(1) United States citizens or aliens lawfully ad-  
16 mitted for permanent residence who have requested in-  
17 formation on themselves pursuant to the provisions of  
18 the Freedom of Information Act (5 U.S.C. 552);

19 "(2) any special activity the existence of which is  
20 not exempt from disclosure under the provisions of the  
21 Freedom of Information Act;

22 "(3) the subject of an investigation by the intelli-  
23 gence committees of the Congress, the Intelligence  
24 Oversight Board, the Office of General Counsel of the  
25 Central Intelligence Agency, the Office of Inspector

1 General of the Central Intelligence Agency, or the  
2 Office of the Director of Central Intelligence for any  
3 impropriety, or violation of law, Executive order, or  
4 Presidential directive in the conduct of an intelligence  
5 activity.

6 “(c) The provisions of subsection (a) of this section shall  
7 not be superseded except by a provision of law which is en-  
8 acted after the date of enactment of subsection (a), and which  
9 specifically cites and repeals or modifies its provisions.

10 “(d) For the purposes of this title the term ‘operational  
11 files’ means those files which document—

12 “(1) the means by which foreign intelligence infor-  
13 mation, counterintelligence information, or counterter-  
14 rorism information is collected through scientific and  
15 technical systems;

16 “(2) foreign intelligence operations, counterintelli-  
17 gence operations, or counterterrorism operations;

18 “(3) investigations conducted to determine the  
19 suitability of potential foreign intelligence sources,  
20 counterintelligence sources, or counterterrorism  
21 sources; or

22 “(4) intelligence or security liaison arrangements  
23 or information exchanges with foreign governments or  
24 their intelligence or security services.

1       “(e)(1) Nonoperational files which contain information  
2 derived or disseminated from operational files shall be subject  
3 to search and review.

4       “(2) The inclusion of information from operational files  
5 in nonoperational files shall not affect the exemption under  
6 subsection (a) of this section of the originating operational  
7 files from search, review, publication, or disclosure.”.

8       (b) The table of contents at the beginning of such Act is  
9 amended by adding at the end thereof the following:

“TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE PUBLIC BY  
THE CENTRAL INTELLIGENCE AGENCY

“Sec. 701. Exemption of certain operational files from search, review, publication, or  
disclosure.”.

10       SEC. 3. The amendments made by section 2 shall be  
11 effective upon enactment of this Act and shall apply with  
12 respect to any requests for records, whether or not such re-  
13 quest was made prior to such enactment, and shall apply to  
14 all cases and proceedings pending before a court of the  
15 United States on the date of such enactment.

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# H. R. 4431

IN THE HOUSE OF REPRESENTATIVES

Mr. WHITEHURST introduced the following bill; which was referred jointly to the Committees on Government Operations and the Permanent Select Committee on Intelligence

# A BILL

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Intelligence Information  
4 Act of 1983".

6 SEC. 2. (a) The Congress finds that—

7 (1) the Freedom of Information Act is providing  
8 the people of the United States with an important  
9 means of acquiring information concerning the work-



1        ings and decisionmaking processes of their Govern-  
2        ment, including the Central Intelligence Agency;

3            (2) the full application of the Freedom of Informa-  
4        tion Act to the Central Intelligence Agency is, howev-  
5        er, imposing unique and serious burdens on this  
6        agency;

7            (3) the processing of a Freedom of Information  
8        Act request by the Central Intelligence Agency nor-  
9        mally requires the search of numerous systems of  
10       records for information responsive to the request;

11           (4) the review of responsive information located in  
12        operational files which concerns sources and methods  
13        utilized in intelligence operations can only be accom-  
14        plished by senior intelligence officers having the neces-  
15        sary operational training and expertise;

16           (5) the Central Intelligence Agency must fully  
17        process all requests for information, even when the re-  
18        requester seeks information which clearly cannot be re-  
19        leased for reasons of national security;

20           (6) release of information out of operational files  
21        risks the compromise of intelligence sources and  
22        methods;

23           (7) eight years of experience under the amended  
24        Freedom of Information Act has demonstrated that this  
25        time-consuming and burdensome search and review of



1 operational files has resulted in the proper withholding  
2 of information contained in such files. The Central In-  
3 telligence Agency should, therefore, no longer be re-  
4 quired to expend valuable manpower and other re-  
5 sources in the search and review of information in  
6 these files;

7 (8) the full application of the Freedom of Informa-  
8 tion Act to the Central Intelligence Agency is per-  
9 ceived by those who cooperate with the United States  
10 Government as constituting a means by which their co-  
11 operation and the information they provide may be dis-  
12 closed;

13 (9) information concerning the means by which in-  
14 telligence is gathered generally is not necessary for  
15 public debate on the defense and foreign policies of the  
16 United States, but information gathered by the Central  
17 Intelligence Agency should remain accessible to re-  
18 questers, subject to existing exemptions under law;

19 (10) the organization of Central Intelligence  
20 Agency records allows the exclusion of operational files  
21 from the search and review requirements of the Free-  
22 dom of Information Act while leaving files containing  
23 information gathered through intelligence operations  
24 accessible to requesters, subject to existing exemptions  
25 under law; and

1           (11) the full application of the Freedom of Infor-  
2           mation Act to the Central Intelligence Agency results  
3           in inordinate delays and the inability of these agencies  
4           to respond to requests for information in a timely  
5           fashion.

6           (b) The purposes of this Act are—

7           (1) to protect the ability of the public to request  
8           information from the Central Intelligence Agency  
9           under the Freedom of Information Act to the extent  
10          that such requests do not require the search and  
11          review of operational files;

12          (2) to protect the right of individual United States  
13          citizens and permanent resident aliens to request infor-  
14          mation on themselves contained in all categories of  
15          files of the Central Intelligence Agency; and

16          (3) to provide relief to the Central Intelligence  
17          Agency from the burdens of searching and reviewing  
18          operational files, so as to improve protection for intelli-  
19          gence sources and methods and enable this agency to  
20          respond to the public's requests for information in a  
21          more timely and efficient manner.

22          SEC. 3. (a) The National Security Act of 1947 is  
23          amended by adding at the end thereof the following new title:

1 "TITLE VII—RELEASE OF REQUESTED INFORMA-  
2 TION TO THE PUBLIC BY THE CENTRAL IN-  
3 TELLIGENCE AGENCY

4 "DESIGNATION OF FILES BY THE DIRECTOR OF CENTRAL  
5 INTELLIGENCE AS EXEMPT FROM SEARCH, REVIEW,  
6 PUBLICATION, OR DISCLOSURE

7 "SEC. 701. (a) In furtherance of the responsibility of the  
8 Director of Central Intelligence to protect intelligence  
9 sources and methods from unauthorized disclosure as set  
10 forth in section 102(d)(3) of this Act (50 U.S.C. 403(d)(3))  
11 and section 6 of the Central Intelligence Agency Act of 1949  
12 (50 U.S.C. 403g), operational files located in the Directorate  
13 of Operations, Directorate for Science and Technology, and  
14 Office of Security of the Central Intelligence Agency shall be  
15 exempted from the provisions of the Freedom of Information  
16 Act which require publication or disclosure, or search or  
17 review in connection therewith, if such files have been spe-  
18 cifically designated by the Director of Central Intelligence to  
19 be—

20 "(1) files of the Directorate of Operations which  
21 document foreign intelligence or counterintelligence op-  
22 erations or intelligence or security liaison arrangements  
23 or information exchanges with foreign governments or  
24 their intelligence or security services; or

1           “(2) files of the Directorate for Science and Tech-  
2           nology which document the means by which foreign in-  
3           telligence or counterintelligence is collected through  
4           scientific and technical systems;

5           “(3) files of the Office of Security which document  
6           investigations conducted to determine the suitability of  
7           potential foreign intelligence or counterintelligence  
8           sources:

9   *Provided, however,* That nondesignated files which may con-  
10   tain information derived or disseminated from designated  
11   operational files shall be subject to search and review. The  
12   inclusion of information from operational files in nondesig-  
13   nated files shall not affect the designation of the originating  
14   operational files as exempt from search, review, publication,  
15   or disclosure: *Provided further,* That the designation of any  
16   operational files shall not prevent the search and review of  
17   such files for information concerning any special activity the  
18   existence of which is not exempt from disclosure under the  
19   provisions of the Freedom of Information Act or for informa-  
20   tion reviewed and relied upon in an investigation by the intel-  
21   ligence committees of the Congress, the Intelligence Over-  
22   sight Board, the Office of General Counsel of the Central  
23   Intelligence Agency, the Office of Inspector General of the  
24   Central Intelligence Agency, or the Office of the Director of  
25   Central Intelligence for any impropriety, or violation of law,

1 Executive order, or Presidential directive in the conduct of  
2 an intelligence activity.

3       “(b) The provisions of this section shall not be super-  
4 seded except by a provision of law which is enacted after the  
5 date of enactment of this section and which specifically cites  
6 and repeals or modifies its provisions.

7       “(c) Notwithstanding subsection (a) of this section,  
8 proper requests by United States citizens, or by aliens law-  
9 fully admitted for permanent residence in the United States,  
10 for information concerning themselves, made pursuant to the  
11 Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of In-  
12 formation Act (5 U.S.C. 552), shall be processed in accord-  
13 ance with those Acts.

14       “(d) The Director of Central Intelligence shall promul-  
15 gate regulations to implement this section as follows:

16               “(1) Such regulations shall require the appropriate  
17 Deputy Directors or Office Head to: (A) specifically  
18 identify categories of files under their control which  
19 they recommend for designation; (B) explain the basis  
20 for their recommendations; and (C) set forth procedures  
21 consistent with the statutory criteria in subsection (a)  
22 which would govern the inclusion of documents in des-  
23 ignated files. Recommended designations, portions of  
24 which may be classified, shall become effective upon

1 written approval of the Director of Central Intelli-  
2 gence.

3 “(2) Such regulations shall further provide proce-  
4 dures and criteria for the review of each designation  
5 not less than once every ten years to determine wheth-  
6 er such designations may be removed from any catego-  
7 ry of files or any portion thereof. Such criteria shall in-  
8 clude consideration of the historical value or other  
9 public interest in the subject matter of the particular  
10 category of files or portions thereof and the potential  
11 for declassifying a significant part of the information  
12 contained therein.

13 “(e)(1) On the complaint under section 552(a)(4)(B) of  
14 title 5 that the Agency has improperly withheld records be-  
15 cause of improper designation of files or improper placement  
16 of records solely in designated files, the court's review shall  
17 be limited to a determination whether the Agency regulations  
18 implementing subsection (a) conform to the statutory criteria  
19 set forth in that subsection for designating files unless the  
20 complaint is supported by an affidavit, based on personal  
21 knowledge or otherwise admissible evidence, which makes a  
22 prima facie showing, that (A) a specific file containing the  
23 records requested was improperly designated; or (B) the  
24 records requested were improperly placed solely in designat-  
25 ed files. If the court finds a prima facie showing has been

1 made under this subsection, it shall order the Agency to file a  
2 sworn response, which may be filed in camera and ex parte,  
3 and the court shall make its determination based upon these  
4 submissions and submissions by the plaintiff. If the court finds  
5 under this subsection that the Agency's regulations imple-  
6 menting subsection (a) of this section do not conform to the  
7 statutory criteria set forth in that subsection for designating  
8 files, or finds that the Agency has improperly designated a  
9 file or improperly placed records solely in designated files,  
10 the Court shall order the Agency to search the particular  
11 designated file for the requested records in accordance with  
12 the provisions of the Freedom of Information Act and to  
13 review such records under the exemptions pursuant to section  
14 552(b) of title 5. If at any time during such proceedings the  
15 CIA agrees to search designated files for the requested  
16 records, the court shall dismiss the cause of action based on  
17 this subsection.

18       “(e)(2) On complaint under section 552(a)(4)(B) of title 5  
19 that the agency has improperly withheld records because of  
20 failure to comply with the regulations adopted pursuant to  
21 subsection (d)(2), the court's review shall be limited to deter-  
22 mining whether the agency considered the criteria set forth in  
23 such regulations.”.

24       (b) The table of contents at the beginning of such Act is  
25 amended by adding at the end thereof the following:

10

**"TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE  
PUBLIC BY THE CENTRAL INTELLIGENCE AGENCY**

**"Sec. 701. Designation of files by the Director of Central Intelligence as exempt  
from search, review, publication, or disclosure."**

1        SEC. 4. The amendments made by section 3 shall be  
2 effective upon enactment of this Act and shall apply with  
3 respect to any requests for records, whether or not such re-  
4 quest was made prior to such enactment, and shall apply to  
5 all cases and proceedings pending before a court of the  
6 United States on the date of such enactment.

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